

6^{em}
5/2/01

ORIGINAL
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD C. WOJEWODZKI,

Plaintiff

v.

CONSOLIDATED FREIGHTWAYS,
INC.,

Defendant

CIVIL ACTION NO. 1:CV 01-285

JUDGE SYLVIA H. RAMBO-HARRISBURG, PA

Ameyer

FILED

MAY 02 2001

MARY E. D'ANDREA, CLERK

JURY TRIAL DEMANDED *PS* Deputy Clerk

**CONSOLIDATED FREIGHTWAYS CORPORATION'S AMENDED MOTION
TO DISMISS OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

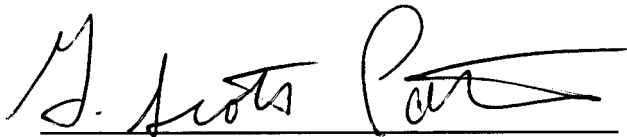
Consolidated Freightways Corporation of Delaware (hereinafter "CF"), by its attorneys, hereby moves, pursuant to Rules 12(b)(6) and 56(b) of the Federal Rules of Civil Procedure, to dismiss Plaintiff's Complaint or, alternatively, for an order entering judgment in its favor. In support of this motion, CF states as follows:

1. On February 14, 2001, Plaintiff commenced this action by filing his Complaint.
2. Plaintiff asserts his claim against CF under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq ("ADEA") (Count I).
3. Plaintiff, age 56, bases his claim on the assertions that he was demoted because of his age and that he was replaced by a substantially younger person. Compl., at ¶ 13.
4. Plaintiff's replacement was James M. Kot, age 51. See Declaration of Jeff Rice, attached as Exhibit 1.
5. CF hereby moves to dismiss Plaintiff's Complaint in its entirety, pursuant to Fed. R. Civ. Pro. 12(b)(6), for failure to state a claim upon which relief may

be granted. Plaintiff cannot establish a *prima facie* case, as Mr. Kot, Plaintiff's replacement, is not substantially younger than Plaintiff, as defined by the Third Circuit Court of Appeals. See Narin v. Lower Merion School District, 206 F.3d 323 (3d Cir. 2000).

6. CF sets forth its arguments in support of this motion in their supporting Memorandum of Law which will be filed within the time prescribed by Local Rule 7.5 of the United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'V. Candello', is written over a horizontal line.

VINCENT CANDIELLO
G. SCOTT PATERNO
One Commerce Square
417 Walnut Street
Harrisburg, PA 17101-1904
717.237.4000

Of Counsel:

MORGAN, LEWIS & BOCKIUS LLP

Dated: May 2, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD C. WOJEWODZKI,

Plaintiff

v.

CONSOLIDATED FREIGHTWAYS,
INC.,

Defendant

CIVIL ACTION NO. 1:CV 01-285

JUDGE SYLVIA H. RAMBO

JURY TRIAL DEMANDED

DECLARATION OF JEFF RICE

I, Jeff Rice, state that I am an adult who is competent to testify to the matters herein and that the matters herein are within my personal knowledge:

1. In July of 1999, James Kot was promoted to Regional Dispatch Manager.
2. Mr. Kot replaced Richard C. Wojewodzki, A/K/A Dick Ski.
3. Mr. Kot's birthday is 6/17/49.
4. Attached hereto as Exhibit A is a true and accurate copy of the "Employee Change Notification" that expressly designates Mr. Kot as Mr. Wojewodzki's replacement.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


JEFF RICE

5/2/01
DATE

09/14/2000 15:03 71724005/8

EMPLOYEE CHANGE NOTIFICATION

2
EXHIBIT

TODAY'S DATE 07/14/1999		COMPANY NAME Consolidated Ptwys Co of DE		EFFECTIVE DATE 6/13/99	
SSN # 078-42-2981				EMPLOYEE # 00187	
COMPUTER PRINT SECTION			HAND PRINT SECTION		
NAME(LAST) Kot		MI K	LEGAL FIRST NAME James		NAME(LAST) KOT
ADDRESS LINE 1 7 Westwood Ct		ADDRESS LINE 2 7 Westwood Ct			
CITY York	STATE PA	ZIP CODE 17402		CITY York	STATE PA
HOME PHONE 078422981	SEX M	MARITAL STATUS Married	FIRST DAY WORKED 01/25/1999	HOME PHONE 3	SEX M
ACTION/REASON CODE MUST BE SHOWN HERE			ACTION/REASON CODE Promo		
REFER TO MIDS SCREEN '190C' FOR INSTRUCTIONS ON ACTION REASONS					
UNIT 30	DEPT/LOC CLP/CLP	JOB CODE 2172	JOB TITLE LineSpv I	UNIT	DEPT/LOC
PHYSICAL LOCATION OF EMPLOYMENT - If other than dept/loc				PHYSICAL LOCATION OF EMPLOYMENT - If other than dept/loc	
EMP STATUS Regular / Full-time				EMP STATUS <input type="checkbox"/> RETURNING TO WORK <input type="checkbox"/> TO REG. FULL TIME <input type="checkbox"/> TO REG. PART TIME <input type="checkbox"/> TO SUPPLEMENTAL <input type="checkbox"/> TO LIGHT DUTY	
HOURLY RATE/WEELY SALARY 1,030.00		MILEAGE RATE		NEW HOURLY RATE/WEELY SALARY 1355.00/wk	
UNION/LOCAL #		UNION SIN. DATE		UNION LOCAL #	
COMPANY AUTO #		D/L EXP. DATE		COMPANY AUTO #	
ANNIVERSARY DATE 01/25/1999		LAST DAY WORKED		ANNIVERSARY DATE	
EXPECTED RETURN DATE		PHYSICAL EXAM EXP. DATE		EXPECTED RETURN DATE	
LOCAL TAX Workers Comp Carlisle Borough Carlisle Borough		DEDUCT CITY TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO NAME OF CITY		DEDUCT COUNTY TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO NAME OF COUNTY	
DEDUCT SCHOOL TAX? <input type="checkbox"/> YES <input type="checkbox"/> NO SCHOOL DIST NAME/NO.					
FINAL VACATION PAY: SALARIED _____ BANKED DAYS DUE _____ HOURLY - SUBMIT FORM 00683-30 SHOW AMT USED SINCE JAN. 1					
REMARKS Has Been Promoted To Regional Dispatch Manager And Will be Replacing Dick Skli					
APPROVALS Jeffrey L. Lue 9/13/99 SIGNATURE DATE SIGNATURE DATE 2 SIGNATURE DATE 4 SIGNATURE DATE					
IF FEDERAL AND/OR STATE TAX WITHHOLDING STATUS IS DESIRED, COMPLETE W4WITHHOLDING STATEMENT AND FORWARD TO PAYROLL					

PLACE PHOTOCOPY OF COMPLETED FORM IN EMPLOYEES PERSONNEL FILE

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD C. WOJEWODZKI,	:	CIVIL ACTION NO. 1:CV 01-285
	:	
Plaintiff	:	
	:	
v.	:	JUDGE SYLVIA H. RAMBO
	:	
CONSOLIDATED FREIGHTWAYS,	:	
INC.,	:	
	:	
Defendant	:	JURY TRIAL DEMANDED

CERTIFICATE OF NONCONCURRENCE

I, Vincent Candiello, hereby certify that on April 27, 2001, Plaintiff's counsel advised me that Plaintiff would not concur in Consolidated Freightways Corporation of Delaware's Motion to Dismiss or, Alternatively, Motion for Summary Judgment.



VINCENT CANDIELLO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidated Freightways Corporation's Amended Motion to Dismiss Plaintiff's Complaint or Alternatively, Motion for Summary Judgment has been served via U.S. Mail, postage prepaid, on this **2nd day of May, 2001**, upon the following:

Lawrence L. Markowitz, Esquire
Markowitz & Krevsky, P.C.
208 E. Market Street
P.O. Box 392
York, PA 17405-0392


G. SCOTT PATERNO